TR 2014/D2 - Income tax: the application of the foreign income tax offset limit under section 770-75 of the Income Tax Assessment Act 1997 to foreign currency hedging transactions

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Draft Taxation Ruling

Income tax: the application of the foreign income tax offset limit under section 770-75 of the *Income Tax Assessment Act 1997* to foreign currency hedging transactions

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What this Ruling is about

1. This Ruling is concerned with the application of section 770-75 of the *Income Tax Assessment Act 1997* (ITAA 1997)[1] (the foreign income tax offset limit) to an Australian resident taxpayer deriving gains and losses from foreign currency hedging transactions undertaken to mitigate the foreign currency fluctuation risk attached to the market value of a portfolio of assets.

2. In particular, this draft Ruling deals with:

- when gains from foreign currency hedging transactions will be from a source other than an Australian source for the purposes of subparagraph 770-75(4)(a)(ii)
- when losses from foreign currency hedging transactions will be reasonably related to income that is covered by paragraph 770-75(4)(a) (disregarded income) for the purposes of subparagraph 770-75(4)(b)(ii).

3. This draft Ruling does not deal with the source of any other assessable income.

[1] Unless specified otherwise all references to legislation are to provisions contained in the ITAA1997.

Terminology

4. The following terminology is used for the purposes of this draft Ruling.

Disregarded income

5. A taxpayer's 'disregarded income' is so much of their assessable income that is covered by paragraph 770-75(4)(a). This will be comprised of so much of their assessable income in respect of which they have paid foreign income tax (including within the meaning of Subdivision 770-C) or which has a foreign source.

Foreign currency hedging transactions

6. 'Foreign currency hedging transactions' are transactions entered into to offset all, or part, of any foreign currency fluctuation risk attached to the value of an underlying portfolio of assets. These transactions may also be referred to as 'trades' and are cash settlable. This risk is generally mitigated through the use of derivatives such as forwards and swaps. Where a Master International Swaps and Derivatives Associations Agreement (ISDA) is in place, the term 'foreign currency hedging transaction' is referring to each transaction entered into under that Master ISDA.

Foreign currency hedging gains

7. 'Foreign currency hedging gains' describe any gain from a foreign currency hedging transaction that is included in assessable income under any provision of the ITAA 1997.

Foreign currency hedging losses

8. 'Foreign currency hedging losses' describe any loss from a foreign currency hedging transaction that is deductible from assessable income under any provision of the ITAA 1997.

Foreign currency hedging strategy

9. The term 'foreign currency hedging strategy' refers to a predetermined strategy to manage exchange rate fluctuations in relation to a particular portfolio of assets. Such a hedging strategy is typically referred to as an 'overlay'. Foreign currency hedging transactions are entered in accordance with this strategy by either the entity itself or a third party hedge manager who is engaged to enter into some or all of the transactions as an agent of the entity. The hedging strategy may or may not have a separate benchmark return over and above the maintenance of the underlying market value of the assets.

10. For the purposes of this draft Ruling, the thing which differentiates one hedging strategy from another is the specific portfolio of assets in respect of which the exposure is being hedged. An entity may therefore have a number of different hedging strategies if they choose to manage the foreign currency exposure separately for each portfolio. For example, an entity may have one hedging strategy for international equities, one for global bonds and one for infrastructure.

Portfolio of assets

11. In this draft Ruling a 'portfolio of assets' refers to assets which are grouped together by a taxpayer for the purpose of (or purposes which include) managing the foreign currency risk associated with those assets. For example, a portfolio of assets may be a specific class of assets or various assets denominated in a particular foreign currency or a mixture of both. The precise composition of a portfolio of assets may change. In this draft Ruling a portfolio of assets refers to a portfolio as it may be comprised from time to time.

Underlying asset

12. In this draft Ruling, the term 'underlying asset' refers to an individual asset included at some time in the portfolio of assets in respect of which the currency exposure is hedged.

Ruling

Source of foreign currency hedging gains

13. While the source of income will always depend on the particular facts and circumstances, in the context of transactions entered into in the manner outlined in Example 1, in determining the source of foreign currency hedging gains the Commissioner will place significant weight on the place where the foreign currency hedging transactions are formed (not where the Master ISDA is formed).

Meaning of 'reasonably related'

14. The term 'reasonably related' in subparagraph 770-75(4)(b)(ii) includes a relationship that may either be direct or indirect. A reasonable relationship between a deduction and the disregarded income will exist where the deduction was incurred in connection with the disregarded income and that connection is not remote or coincidental.

15. Subparagraph 770-75(4)(b)(ii) only requires that a **reasonable** relationship exists between the deductions and the disregarded income for that year. Therefore, the deduction does not need to be incurred in deriving the disregarded income and it does not need to be exclusively related to the disregarded income.

16. Subparagraph 770-75(4)(b)(ii) does not require determining to which income a deduction is 'most' reasonably related, only to which income a deduction is reasonably related. Therefore, a deduction can be reasonably related to more than one type of income. It follows that the whole of a deduction can be reasonably related to one type of income with the whole or part of the same deduction also being reasonably related to another type of income.

17. Issues of apportionment only arise where a deduction is only partly reasonably related to any disregarded income. The correct method of apportionment depends on the particular circumstances of the case.

When are losses from foreign currency hedging transactions reasonably related to disregarded income?

18. Whether foreign currency hedging losses are reasonably related to disregarded income is a question of fact.

19. Whether a foreign currency hedging loss is reasonably related to disregarded income depends on the risk the foreign currency hedging transactions are designed to hedge (for example, the capital value of a portfolio of assets or a specific revenue flow from an asset).

20. A foreign currency hedging loss will be reasonably related to a foreign currency hedging gain that is disregarded income where the foreign currency hedging transactions giving rise to the losses and gains are entered into under the same foreign currency hedging strategy.

21. A taxpayer's foreign currency hedging loss will also, in part, be reasonably related to any foreign sourced capital gain arising from an underlying asset that is included in their net capital gain, if the loss is made from a foreign currency hedging transaction entered into as part of the foreign currency hedging strategy in respect of the portfolio of assets which includes that underlying asset.

Examples

Example 1

22. An Australian taxpayer adopts a strategy to manage a certain level of its foreign currency exposure. It enters into a currency overlay management agreement with an Australian hedge manager.

23. The taxpayer and appropriate counterparties enter Master ISDA's which specify that each will act through a foreign desk.

24. The hedge manager makes decisions in Australia as to which transactions to enter into. The hedge manager nominates the use of the London 4pm spot rate and the preferred counterparties in the trade orders. These trade orders are then conveyed to its foreign desk.

25. There is limited decision making by the foreign desk. The foreign desk sends orders electronically to the relevant counterparties with any specific instructions (such as using the London 4pm spot rate).

26. The foreign desks of the counterparties accept and execute the order. The trades are executed in accordance with the standard terms and conditions as set out in the Master ISDA. Little negotiation occurs between the hedge manager and the counterparties.

27. In this example there are a number of steps and operations involved, spanning a number of different countries. The appointment of the hedge manager and the decision making concerning the hedging strategy are undertaken in Australia. However, the formation of the hedging contracts happens overseas.

28. The decision making that occurs in Australia primarily relates to determining the size and nature of the trades and the preferred counter parties. While these are all intricately connected with the reason 'why' any gain is being made, they do not actually give rise to the gain. The immediate source of any gains is the contracts themselves.

29. It follows in these circumstances that as the execution of a trade (and hence the formation of the contract) is undertaken in a foreign jurisdiction, any gain arising from that transaction will have a foreign source.

Example 2

30. An Australian resident entity (the Australian entity) has three separately identified portfolios of international assets, each managed by a different investment manager:

- International equities (market value $100 million).
- Private market property (market value $80 million).
- Infrastructure (market value $50 million).

31. The Australian entity engages an Australian based, external hedge manager (the Manager) to manage its exposure to foreign currency fluctuations in respect of each of its asset portfolios on an overlay basis for each portfolio. The asset portfolios are identified separately in the management agreement. The Manager's performance is assessed monthly against performance criteria set separately for each portfolio of assets.

32. The Australian entity determines how much of the value of each of its asset portfolios it wishes to hedge and instructs the Manager accordingly.

33. The Manager enters into forward contracts as agent of the Australian entity. All contracts are entered into in accordance with the fact pattern in Example 1 and hence all the hedging gains are foreign sourced.

34. Foreign currency hedging gains and losses (which are respectively assessable income and allowable deductions of the Australian entity) are realised in respect of each portfolio.

35. In respect of the international equities portfolio there are foreign currency hedging gains of $5 million and foreign currency hedging losses of $6 million. In respect of the private market property portfolio there are foreign currency hedging gains of $1 million and foreign currency hedging losses of $500,000. In respect of the infrastructure portfolio there are foreign currency hedging gains of $500,000 and foreign currency hedging losses of $1.5 million. No foreign income tax is paid on the foreign currency hedging gains.

36. The Australian entity also derived assessable dividends from the international equities, in respect of which it paid foreign income tax. In respect of the other two portfolios, the Australian entity made capital losses and did not derive any assessable income.

37. Both the foreign currency hedging gains and the dividend income are disregarded income under paragraph 770-75(4)(a).

38. In respect of each portfolio, the foreign currency hedging losses are reasonably related to the foreign currency hedging gains. There is therefore an amount of disregarded income to which each of the foreign currency hedging losses wholly reasonably relate.

39. Whilst there is therefore no need to consider whether those losses also relate to any other disregarded income, for completeness, it is nonetheless noted that none of the foreign currency hedging losses relate to the dividend income.

40. For the purposes of the calculation in subsection 770-75(4);

- the disregarded income is the $6.5 million foreign currency hedging gains and the dividend income;
- the amount of the deductions referred to in subparagraph 770-75(4)(b)(ii) is the $8 million total foreign currency hedging losses.

Example 3

41. The facts are the same as in Example 2 except that a capital gain of $1 million from the infrastructure portfolio representing the sale of one asset within the portfolio is included in the net capital gain of the Australian entity.

42. As stated in Example 2, because – in respect of each portfolio – the foreign currency hedging losses are reasonably related, in their entirety, to the hedging gains, there is no need to consider whether those losses also relate to any other disregarded income. (For completeness, it is nonetheless noted that in respect of the infrastructure portfolio, the foreign currency hedging losses are also, in part, reasonably related to the net capital gain income.)

43. For the purposes of the calculation in subsection 770-75(4), the disregarded income and amount of deductions referred to in subparagraph 770-75(4)(b)(ii) are as set out in Example 2.

Example 4

44. An Australian resident superannuation fund (the Fund), has investments in foreign assets which include foreign property. As part of its investment strategy, the Fund adopts a foreign currency hedging strategy to manage its exposure to fluctuations in foreign exchange movements in respect of the foreign property.

45. The Fund enters into an agreement with an Australian hedge manager to manage the foreign currency risk in respect of the foreign property portfolio.

46. The Australian hedge manager enters into foreign currency hedging transactions. The foreign currency hedging gains are Australian sourced. The Fund makes both foreign currency hedging gains and losses from transactions entered into under this program.

47. The Fund disposes of some of the foreign property and realises a capital gain and pays foreign income tax on this gain.

48. The capital gain from the foreign property is included in the Fund's net capital gain and is disregarded income within the meaning of subparagraph 770-75(4)(a)(i). The foreign currency hedging gains under the hedging program are not disregarded income as they are from an Australian source.

49. The foreign currency hedging losses from hedging transactions which hedge the market value of the portfolio of assets (that includes the foreign property that gave rise to the capital gain) are, in part, reasonably related to the disregarded net capital gain income.

50. As the foreign currency hedging losses relate to the whole portfolio of assets, only a portion of these losses is reasonably related to the net capital gain. Therefore, the foreign currency hedging losses from this portfolio will need to be apportioned on a reasonable basis.

Date of effect

51. When the final Ruling is issued, it is currently proposed to apply both before and after its date of issue. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

52. In view of the fact that some private rulings expressing contrary views to those in this draft Ruling have been made in respect of the issue of the source of foreign currency hedging gains, submissions are sought on whether the final Ruling should apply only from a certain date, and, if so, what that date should be.

Commissioner of Taxation

26 March 2014

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's preliminary view has been reached. It does not form part of the proposed binding public ruling.

Background

53. Large institutional investors, such as superannuation funds, typically manage their exposure to foreign currency arising from their investments denominated in foreign currency on an overlay basis. Under this method, a decision is made to adopt a foreign currency hedging strategy whereby a percentage of the value of one or more portfolios of assets is hedged.

54. The foreign currency hedging strategy is therefore typically quite separate to the management of the underlying assets themselves.

55. The purpose of the foreign currency hedging strategy is to minimise the foreign currency risk from the effect foreign currency fluctuations could have on the underlying investment values such that any changes arising from foreign currency movements are negated.

56. The very nature of a foreign currency hedging strategy means that both (deductible) foreign currency hedging losses and (assessable) foreign currency hedging gains will result. Under an overlay foreign currency hedging strategy, the foreign currency hedging losses are not necessarily made in pursuit of a foreign currency hedging gain.

57. Under an overlay foreign currency hedging strategy those gains and losses cannot be specifically attributed to a particular asset or transaction or item of income. The foreign currency hedging strategy and therefore the individual hedging transactions are in respect of a dollar value informed by the market value of the underlying assets making up the portfolio.

Overview of Division 770

58. The foreign income tax offset rules contained in Division 770 provide relief from the double taxation that may arise where a taxpayer pays foreign tax on income that is also taxable in Australia. A non-refundable tax offset for foreign income tax paid is allowed in respect of amounts which are also included in assessable income in Australia.

59. To be entitled to an offset under subsection 770-10(1), a taxpayer must have:

- included an amount in their assessable income for that income year and
- paid foreign income tax (as defined by subsection 770-15(1)) in respect of that amount.

60. The amount of the foreign income tax offset will be the amount of foreign income tax paid, subject to the foreign income tax offset limit worked out under section 770-75. The foreign income tax offset limit essentially limits the offset to the amount of Australian tax otherwise payable on the foreign income (or other amounts in respect of which the taxpayer has paid foreign income tax) included in assessable income.

61. Subsection 770-75(1) provides that where the foreign income tax offset exceeds the offset limit, the offset is reduced by the amount of the excess.[2]

62. In determining the foreign income tax offset limit, paragraph 770-75(2)(b) requires the calculation of two different amounts.

63. The first amount is the income tax payable for the income year before any tax offsets or penalties are applied (subparagraph 770-75(2)(b)(i)). The second amount is the income tax payable for the income year before any tax offsets or penalties are applied and assuming certain other amounts are disregarded (subparagraph 770-75(2)(b)(ii)).

64. The second amount is subtracted from the first amount to determine the limit and consequently, the maximum amount of foreign income tax offset allowable.

65. Subsection 770-75(4) provides the assumptions for the purposes of calculating the second amount as follows:

> Assume that:
>
> (a) your assessable income did not include:
>
> (i) so much of any amount included in your assessable income as represents an amount in respect of which you paid *foreign income tax that counts towards the *tax offset for the year; and
>
> (ii) any other amounts of *ordinary income or *statutory income from a source other than an *Australian source; and
>
> (b) you were not entitled to any deductions that:
>
> (i) are *debt deductions that are attributable to an *overseas permanent establishment of yours; or
>
> (ii) are deductions (other than debt deductions) that are reasonably related to amounts covered by paragraph (a) for that year.

66. A foreign currency hedging gain will therefore be taken into account under paragraph 770-75(4)(a) if either:

- foreign tax was paid in respect of it or
- it is from a source other than an Australian source.

[2] If the total foreign income tax paid is $1,000 or less, it is not necessary to calculate the foreign income tax offset limit.

67. A deductible foreign currency hedging loss will be taken into account under paragraph 770-75(4)(b) if it is reasonably related to an amount that is either assessable income in respect of which foreign tax has been paid or from a source other than an Australian source.

68. It is therefore necessary to determine:

(a) how these gains and losses are treated for Australian tax purposes and

(b) the source of the foreign currency hedging gains.

Tax treatment of foreign currency hedging gains and losses

69. Division 230 and Division 775 need to be taken into account when determining the tax treatment of foreign currency hedging gains and losses. Division 775 is only relevant where Division 230 is not applicable to the transaction.[3]

Division 230

70. Division 230 deals with the taxation of gains and losses from financial arrangements commencing on or after 1 July 2010[4], with some exceptions.[5]

71. Where Division 230 applies to a financial arrangement, section 230-15 operates to make gains from that financial arrangement assessable income and losses from that financial arrangement deductible to the extent that the losses are made in gaining or producing assessable income or are necessarily incurred in carrying on business for the purposes of gaining or producing assessable income.

72. Foreign currency hedging transactions meet the definition of a 'financial arrangement' in section 230-45.

73. Division 230 provides for various tax methods to determine the basis for calculating what amounts are assessable or deductible in each income year.

74. With the exception of certain gains and losses worked out under the hedging financial arrangements method provided by Subdivision 230-E (discussed below), gains and losses are treated as being revenue in nature and therefore separately form part of assessable income and allowable deductions respectively.[6]

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[3] Subsection 230-20(4).

[4] A taxpayer could also elect to apply the rules to financial arrangements acquired on or after the first day of the first income year starting on or after 1 July 2009.

[5] Subdivision 230-H.

[6] One of the objects of Division 230 is to allocate gains and losses to income years throughout the life of financial arrangements. This approach may cause mismatches where a foreign jurisdiction taxes gains at the end of the financial arrangement. When foreign income tax is paid after the year in which the income is included in

75. Subdivision 230-E allows for a 'hedging financial arrangements method' to apply to a 'hedging financial arrangement'[7] where an election is made and certain other criteria are satisfied.[8]

76. The hedging financial arrangements method seeks to reduce post-tax mismatch by ensuring that gains and losses from hedging financial arrangements are included in taxable income at the same time that the gains or losses made from the hedged item or items are included in taxable income.[9]

77. Broadly, where the hedging financial arrangements method applies, a gain or loss from a hedging financial arrangement will be treated as a capital gain or loss to the extent that it is reasonably attributable to a CGT event happening to the underlying asset and the circumstances are such that a gain made in respect of the underlying asset would be included in the taxpayer's net capital gain (rather than being assessable as ordinary income).[10]

78. Where the hedging financial arrangements method applies and a hedging financial arrangement is reasonably attributable to a hedged item that produces ordinary or statutory income, the table in subsection 230-310(4) generally applies such that a gain is treated as ordinary or statutory income and any loss from the arrangement is treated as a loss incurred in gaining or producing ordinary or statutory income.

79. Where a foreign currency hedging loss is treated as a capital loss it is taken into account in calculating the net capital gain[11] or net capital loss[12] for the relevant income year. Therefore, if the foreign currency hedging loss is treated as being on capital account under Subdivision 230-E, it will not be a 'deduction' for the purpose of subparagraph 770-75(4)(b)(ii). Likewise, because a capital loss is not an amount that is deductible, such losses are not 'foreign currency hedging losses' within the meaning of this draft Ruling.[13]

Division 775

80. Where Division 230 does not apply, Division 775 will be relevant to the foreign currency hedging gains and losses.[14]

Australian taxable income, the assessment can be amended to increase the foreign income tax offset.

[7] As defined in section 230-335.

[8] See subsection 230-315(2).

[9] Paragraph 8.6 of the Explanatory Memorandum to the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 which inserted Division 230.

[10] Item 1 of the table to subsection 230-310(4).

[11] Section 102-5.

[12] Section 102-10.

[13] See paragraph 8 of this draft Ruling.

[14] See paragraph 85 of Taxation Ruling TR 2012 /3. Division 775 applies to transactions entered into in or after the first income year commencing on or after 1July 2003 and, at the option of the taxpayer, transactions entered into prior to the first income year commencing after 1 July 2003 but realised after that time.

81. In respect of forex gains the basic rule in subsection 775-15(1) provides that assessable income for an income year includes a forex realisation gain made as a result of a forex realisation event that happens during that year.

82. In respect of forex losses the basic rule in subsection 775-30(1) provides that you can deduct from assessable income for an income year a forex realisation loss you make as a result of a forex realisation event that happens during that year.

83. Foreign currency hedging gains and losses covered by Division 775 therefore form part of assessable income or allowable deductions.

Source of foreign currency hedging gains

84. Assessable income from a source other than an Australian source, upon which the taxpayer has not (or is not taken to have) paid foreign tax, is disregarded pursuant to subparagraph 770-75(4)(a)(ii).[15]

85. Determining the source of an item of income:

- is a matter of fact to be determined having regard to the facts and circumstances of each case and the relative weight to be given to those facts and circumstances[16]
- looks to the element or elements in the transaction which contribute to the derivation of the income and the relative importance of each, viewed through an eye focussed on practical business affairs.[17]

86. Following *Nathan's Case*, the courts have provided some guiding principles such as:

- Every case must be decided on its own circumstances.[18]
- The answer is not to be found in the cases, but in the weighing of the relative importance of the various factors which the cases have shown to be relevant.[19]
- There are no presumptions and no rules of law which require that that question be resolved in any particular way.[20]

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[15] Assessable income upon which the taxpayer has (or is taken to have) paid foreign tax, is disregarded pursuant to subparagraph 770-75(4)(a)(i).
[16] *Nathan v. Federal Commissioner of Taxation* (1918) 25 CLR 183; [1918] HCA 45 (*Nathan's case*).
[17] *Re Thorpe Nominees Pty Limited v. The Commissioner of Taxation of the Commonwealth of Australia* [1988] FCA 387; 88 ATC 4886; (1988) 19 ATR 1834 and *Deputy Commissioner of Taxation v. Kirk* [1900] AC 588.
[18] Rich J in *Tariff Reinsurances Ltd v. Commissioner of Taxes (Vic)* (1938) 59 CLR 194 at 208.
[19] Bowen CJ in *FC of T v. Efstathakis* [1979] FCA 28; 79 ATC 4256 at 4259; (1979) 9 ATR 867 at 870.

- It is a matter of 'judgment' and 'relative weight' in each case to determine the various factors to be taken into account in reaching this conclusion.[21]

87. Importantly, the focus is not on 'why' the gain is being made but on 'where'.

88. Thus, in the joint judgment in *Commissioner of Taxation (Western Australia) v. D & W Murray Ltd*, [22] the High Court stated:

> To attempt to appraise the relative efficacy or potency of these contributory factors, when and if ascertained, and to distribute the profit accordingly among the localities to which the factors have been assigned, is to lose sight of the true nature of the question, which is not why, but where, the profits were earned.[23]

89. In cases where the operations are characterised by entering into transactions, there are cases in which the place of formation of the contract has been given significant weight. There are other cases where the place of formation of the contract was considered to be only one contributory factor or given little significance.

90. Thus, in respect of the former cases, Lord Bridge in the Privy Council in the UK in *Commissioner of Inland Revenue v. Hang Seng Bank Ltd*[24] said:

> The broad guiding principle, attested by many authorities, is that one looks to see what the taxpayer has done to earn the profit in question. If he has rendered a service or engaged in an activity such as the manufacture of goods, the profit will have arisen or derived from the place where the service was rendered or the profit making activity carried on. But if the profit was earned by the exploitation of property assets as by letting property, lending money or dealing in commodities or securities buying and selling at a profit, the profit will have arisen in or derived from the place where the property was let, the money was lent or the contracts of purchase and sale were effected.

91. Some support for this view can also be found in Lord Starke's judgment in *Australian Machinery & Investment Co Ltd v. DCT*.[25]

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[20] Barwick CJ in *FCT v. Mitchum* [1965] HCA 23 at paragraph 18; (1965) 113 CLR 401 at 407.
[21] Beaumont J in *FC of T v. Spotless Services Limited & Anor* (1995) 62 FCR 244 at 260; 95 ATC 4775 at 4789; (1995) 32 ATR 309 at 321.
[22] (1929) 42 CLR 332; [1929] HCA 21.
[23] (1929) 42 CLR 332 at 346.
[24] [1991] AC 306.
[25] (1946) 180 CLR 9; [1946] HCA 65.

92. In contrast, in *Esquire Nominees Ltd v. Federal Commissioner of Taxation*[26] (*Esquire Nominees*) the High Court held that a dividend paid by a company is sourced where the fund from which the dividend is distributed is located, and such fund is located (in the case of an investment company) where the company has its central management and control. *Esquire Nominees* thus provides some authority that income may be sourced in the place where the high-level decision-making takes place. Similarly, in *Malayan Shipping Co. Ltd v Federal Commissioner of Taxation* [27] the High Court was prepared to find that the company was essentially earning its income and carrying on its business where the decision-making took place. In *Cliff's International, Inc v. Federal Commissioner of Taxation*[28] *(Cliff's International)*, Kennedy J considered that the bulk of the negotiations occurred overseas and the technical information informing those negotiations came from overseas. By the time the negotiations were finalised the 'work in obtaining contracts of sale effectively was done'.[29]

93. In *DC of T (NSW) v. Hillsdon Watts Ltd*[30] Latham CJ observed:

> Income which is received by a person may be the result of a whole series of operations conducted in different countries. When it becomes necessary to determine what are the sources of the income it is a mistake to concentrate attention on 'the final stage' in the operations which actually brings in the money which constitutes the gross income — Commissioner of Taxation v Kirk, [1900] AC 588 at p 593.[31]

94. The cases have been decided mainly against the background of traditional transactions and have not specifically contemplated high volume derivative transactions. Ultimately, they all point to the fact that determining source will always depend on the facts at hand.

[26] (1972) 129 CLR 208; 73 ATC 4114; (1973) 4 ATR 75.
[27] (1946) 71 CLR 156; (1946) 3 AITR 258; (1946) 8 ATD 75.
[28] 85 ATC 4374; (1985) 16 ATR 601.
[29] At ATC 4390; ATR 620.
[30] (1937) 57 CLR 36; [1937] HCA 13.
[31] At CLR 43-44.

95. In *Federal Commissioner of Taxation v. United Aircraft Corporation*[32] Rich J. said:

> As the question to be determined in this case is a question of fact a decision on one set of facts is not binding and is often of little help on another set of facts. In *Premier Automatic Ticket Issuers Ltd. v Federal Commissioner of Taxation*... and *Tariff Reinsurances Ltd. v Commissioner of Taxes (Vict.)*... - cases which may, perhaps, be regarded as borderline cases - the Court considered that, on the facts in each case, the contract should be regarded as the sole source of income and that therefore the locus of the contract was the locus of the source. But it does not follow that, in every case where a contract is one of the sources, the contract should be regarded as the sole source...[33]

96. Given this, it is difficult to provide a definitive view on where the source of a foreign currency hedging gain will be in the abstract. There will always be a number of different factual variants the significance of which will also vary. Nonetheless, guidance on the issue of source in the context of foreign currency hedging transactions can be provided against the background of what the Commissioner understands a typical hedging transaction to look like. The details of such a typical transaction are set out in Example 1.

97. The cases above provide authority that sometimes it is the decision regarding which trades to do which can be said to give rise to the profit. However, the difficulty in applying such an approach to hedging transactions is that the purpose of entering into transactions is not necessarily one of profit. The intent of an overlay foreign currency hedging strategy is to minimise the risk associated with losses arising through foreign currency fluctuations. Whether a gain or loss on a foreign currency hedging transaction ensues depends on the currency values at the conclusion of the contract. The contract is not, therefore, merely the final stage in a series of operations resulting in the gain. It is the sole 'thing' which will actually determine whether or not a gain or loss is made.

98. Thus, where the aim is in fact risk minimisation which is achieved through entering into and concluding contracts overseas based on fluctuations in various currency rates, the predominant, if not sole, activity that can, as a practical matter of fact, be said to be the source of that gain is the entering into and conclusion of the contract itself. Decisions as to how to best manage the foreign currency risk and instructions on the management of that risk, while they may culminate in effectively managing the overall risk, do not of themselves give rise to a foreign currency hedging gain. They are merely part of the reason why the transaction was entered into.

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[32] (1943) 68 CLR 525; [1943] HCA 50; (1943) 7 ATD 318.

[33] CLR 538; ATD 324. See also Gibbs J in *Esquire Nominees Ltd (Trustee of Manolas Trust) v. Federal Commissioner of Taxation* (1972) 129 CLR 177 at 192; 72 ATC 4076 at 4086; (1972) 3 ATR 105 at 116.

99. A contract is regarded as made at the place where the final act that created the contractual obligation is done.[34] Where and when this 'final act' occurs depends on the nature of the agreement between the parties.

100. Consistent with the facts in Example 1, the typical foreign currency hedging transaction is governed by the Master ISDA. When a contract is formed under the Master ISDA terms was considered in *Powercor Australia Ltd v. Pacific Power*[35] (*Powercor Case*) which stated:

> [557] One of the purposes of the Master Agreement was to provide for the moment in time when a contract was concluded and binding.
>
> [558] According to s9(e)(ii) the parties were 'legally bound by the terms of each transaction from the moment *they agreed to those terms* '.
>
> [559] The parties in executing the Master Agreement agreed that in respect of any transaction negotiated thereafter, the agreement was concluded and binding from the moment when they agreed to the terms. Once reached, the agreement amended the Master Agreement.[36]

101. Under the Master ISDA, the parties agree that they intend to be bound once the terms of the transaction are agreed.[37] Consistent with the industry practice, where there is no agreement to vary the terms of the Master ISDA, this occurs the instant when the counterparty agrees to the terms of the individual transactions.

102. It follows that, in the scenario outlined in Example 1, where the formation of a trade (and hence the formation of the contract) is undertaken in a foreign jurisdiction, any gain arising from that transaction will have a foreign source.

The meaning of 'reasonably related'

103. Deductions will be disregarded under subparagraph 770-75(4)(b)(ii) where they are 'reasonably related' to disregarded income.

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[34] *Tallerman & Co Pty Ltd v. Nathan's Merchandise (Victoria) Pty Ltd* (1957) 98 CLR 93 at 112.
[35] [1999] VSC 110.
[36] At paragraphs 557 to 559.
[37] See also paragraphs 354 to 379 and 564 to 569 of the *Powercor Case*.

104. The meaning of 'reasonably related' was considered in the High Court case *Airservices Australia v. Canadian Airlines International Ltd*[38] in the context of whether charges were 'reasonably related' to expenses incurred by the Civil Aviation Authority in the provision of services and facilities. McHugh J stated the following:

> The concept of 'reasonableness' is a category of indeterminate reference. Its application in a given factual situation cannot depend upon a logical formulation. In one sense, the appearance of the word 'reasonable' or a variant in a statutory provision is, as Oliver Wendell Holmes Jr pointed out, nothing more than a direction to the court applying the provision '[to derive] the rule to be applied from daily experience'. The requirement that the charges be reasonably related to the expenses as described above at least requires that there be some rational relationship between the charges and the expenses. But once this rather low threshold is met, the degree of closeness of the relationship which is required in order for the statutory requirement to be satisfied cannot be described in the abstract. It depends on the application, to the circumstances of a particular case, of the fact-value complex that the word 'reasonably' invokes.[39]

105. The meaning of 'reasonably related' therefore depends on the statutory context.[40]

Statutory context

106. The object of Division 770 is to relieve double taxation where foreign tax has been paid by a taxpayer on their assessable income by granting a foreign income tax offset. As outlined in paragraphs 58 to 64, the offset is capped at the Australian tax otherwise payable.

107. This is achieved by comparing the tax actually payable and what would be payable had the net double taxed income (and other net income not double taxed but still not from Australian sources) not been included (the disregarded income).

108. In this respect, the context is not materially different to the former foreign tax credit provisions in former section 160AF of the *Income Tax Assessment Act 1936* (ITAA 1936).[41] Under these provisions, the foreign tax credit was also effectively capped at the amount of Australian tax payable in respect of the foreign income calculated by reference to the defined concept of 'net foreign income'. In calculating net foreign income, assessable foreign income was reduced by deductions that 'related exclusively' to that income and so much of other deductions which, in the opinion of the Commissioner were 'appropriately related' to that income.

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[38] (1999) 202 CLR 133; [1999] HCA 62; (2000) 43 ATR 246.
[39] At CLR 220; HCA 62 paragraph 253.
[40] See also *HP Mercantile Pty Ltd v. Commissioner of Taxation* (2005) 143 FCR 553; [2005] FCAFC 126 and *Woodside Energy Ltd v. Federal Commissioner of Taxation* (2006) 155 FCR 357; [2006] FCA 1303; (2006) 64 ATR 379.
[41] Former Division 18 of the ITAA1936 was replaced by Division 770 with effect from income years commencing on or after 1 July 2008.

109. The meaning of 'may appropriately be related' in the context of the definition of 'net foreign income' in former subsection 160AF(8) of the ITAA 1936 was considered in *AAT Case 11,375*.[42] Senior Member Block held that to be related the deductions must be connected, have reference to, or stand in some relation to the foreign income. Further, the term 'connected' must, having regard to the qualifying word 'appropriately', mean that the relevant connection has more than a mere passing or peripheral connection.

110. As the policy context in this regard is not materially different to the former foreign tax credit provisions, the connection required by the term 'related' can be described in the same terms as in *AAT Case 11,375*; that is, the deductions must be connected, have reference to, or stand in some relation to the disregarded income. The qualitative term 'reasonable', similar to 'appropriately' means that the connection must be more than passing.

111. Importantly, paragraph 770-75(4)(b) is not asking to what disregarded income the deduction is *most* reasonably related. It is simply asking whether the deduction (arising in an income year) is reasonably related to disregarded income (arising in that same income year).

112. There is nothing in the use of the term 'related' that suggests that a deduction in whole cannot relate to more than one amount of income. Where a deduction, in its entirety does relate to one amount of income, it can still nonetheless have a reasonable relationship to another amount of income. The finding of the first relationship does not rule out there being other relationships between the deductions and other amounts of income.

Conclusion

113. The phrase 'reasonably related' denotes a relationship that may either be direct or indirect, provided that the relationship consists of a real connection. A deduction will meet the legislative description if it is connected to the disregarded income in a way which is not coincidental or remote.

114. The words do not require an identification of deductions that relate exclusively to the disregarded income or even deductions which can be identified as incurred in deriving the disregarded income. Clearly both would meet the description of being 'reasonably related' but a direct, causal connection is not required. The test, on its words, is not the same as the 'incurred in gaining or producing' test in section 8-1. It is merely requiring the identification of a relationship to disregarded income that is reasonable.

115. Further, a deduction can be reasonably related to more than one identifiable amount of disregarded income.

[42] [1996] AATA 404; 96 ATC 598; (1996) 34 ATR 1034.

116. Whether two items are reasonably related to each other is a question of fact, and the facts are to be determined by the nature of the transaction and its context.

Are foreign currency hedging losses reasonably related to disregarded income?

117. In the context of a portfolio of assets where the foreign currency risk is managed under an overlay, there are three items of income that can be 'disregarded' under paragraph 770-75(4)(a):

- the foreign currency hedging gains (where foreign sourced)
- net capital gains which include a capital gain arising from the underlying assets forming the basis of the hedging portfolio, and
- any revenue flows from the underlying assets such as dividend and interest.

118. Whether a sufficient relationship exists between foreign currency hedging losses and any or all of these items of income is considered below.

Foreign currency hedging gains

119. As noted, the objective of a foreign currency hedging strategy is to manage exposure to currency movements to protect the investor from depreciating foreign currencies, by offsetting a decrease in the AUD value of assets held by an investor against the profit from a hedging transaction.

120. In this context, a foreign currency hedging strategy sets out in detail the overall level of acceptable risk, types of foreign currency hedging transactions that are to be undertaken, requirements that these transactions must comply with and criteria under which the strategy will be evaluated.

121. The value of the portfolio to be hedged is determined by the market value of the assets forming that portfolio. The hedge manager is typically provided with the market value of the portfolio on a regular basis and adjusts the hedging transactions accordingly.

122. The transactions entered into to manage foreign currency risk will, by their nature, result in both foreign currency hedging gains and foreign currency hedging losses. The gain on one transaction and the loss on another are not connected in the sense that one arises *because of* the other or the loss arises in pursuance of the gain. They result from separate transactions. Viewed at the level of the individual transactions, the loss on one has no bearing on the gain on another. The motive behind such transactions may not even be one of profit but simply one of managing risk.

123. The foreign currency hedging gains and losses, however, do arise in pursuance of the same objective of hedging the foreign currency risk associated with a portfolio of assets. In this sense, there is a relationship between the gain and the loss because of the connection to the foreign currency hedging strategy in pursuance of which the gains and losses are made. In the context of a provision calculating a net amount of foreign income for an income year, the fact that the foreign currency hedging gain and loss are arising because of the management of the foreign currency risk associated with a particular portfolio of assets is sufficient to establish this relationship as reasonable. In such a situation, the foreign currency hedging losses 'stand in relation to' or 'have reference to' the foreign currency hedging gains as they both arise from transactions entered into as part of managing the foreign currency risk of the portfolio.

124. As noted the relationship required is not one of 'incurred in gaining or producing'. The relationship does not, therefore, have to be found in looking solely at the income producing activity – the foreign currency hedging transaction giving rise to a gain – and asking whether the loss was incurred in pursuance of this activity. Because the relationship can be indirect, it can be found at the level of the object and purpose of the taxpayer in entering into the transactions. That object and purpose is to protect the market value of the portfolio of assets and will necessarily involve both foreign currency hedging gains and losses. It is considered that it would create a distortion of the true position, in terms of the net foreign income, to include only the foreign currency hedging gains and exclude the foreign currency hedging losses from the calculation in paragraph 770-75(4)(b).

125. It follows that for the purposes of subparagraph 770-75(4)(b)(ii), foreign currency hedging losses are reasonably related to foreign currency hedging gains where both result from transactions entered into as part of the same foreign currency hedging strategy. For this reason where the management of the foreign currency hedging strategy remains unchanged but the hedge manager changes part way through an income year, foreign currency hedging gains and losses from transactions entered by each manager are reasonably related to each other as they were realised from foreign currency hedging transactions related to the same portfolio of assets.

126. However, foreign currency hedging losses arising in respect of one portfolio are not reasonably related to foreign currency hedging gains arising in respect of a different portfolio. Such gains do not arise under the same foreign currency hedging strategy, which forms the basis of the relationship between hedging gains and losses in respect of a single portfolio. The foreign currency risk being managed for each portfolio is different. The foreign currency hedging transactions in respect of one portfolio, therefore, are not reasonably related in any sufficient degree to the foreign currency hedging transactions in another portfolio. Therefore, in the unusual situation where there are only hedging losses (and no hedging gains) arising from one portfolio, these losses will be isolated to that portfolio and will not offset any disregarded income (including hedging gains arising in respect of different portfolios) unless and to the extent that they can be said to reasonably relate to any other disregarded income.

Capital gains from foreign investments

127. As established above, a foreign currency hedging loss (or gain) arises in pursuance of the foreign currency hedging strategy, the purpose of which is to minimise the foreign currency risk to 'smooth over' the effect foreign currency fluctuations have on the underlying investment values. The hedging losses can be said to be incurred in hedging the underlying value of the portfolio of the assets. In light of this purpose, there is a connection between the underlying portfolio of assets and the foreign currency hedging transactions entered into for that portfolio. Where an asset within the portfolio is sold which results in a capital gain, that capital gain reflects the market value forming the basis of a portion of the hedge. Furthermore, that capital gain will reflect any movements in currency occurring between acquisition and the CGT event. There is therefore a relationship between the capital gain and the hedging losses which consists of a real connection which is not coincidental or remote. Therefore, any foreign currency hedging losses resulting from hedging the underlying assets are, in part, reasonably related to a capital gain made on realising an asset forming part of that portfolio. It follows that where there is an overall net capital gain (which to some extent is made up of a capital gain made from the sale or other realisation of an asset forming part of a portfolio subject to a foreign currency hedging strategy, in circumstances where the capital gain is either subject to foreign tax or otherwise foreign sourced), there is disregarded income to which the foreign currency hedging loss can, at least in part, be reasonably related to.

128. In these circumstances, because the hedging loss is made in respect of the entire portfolio, and the capital gain is made in respect of only a partial realisation of the portfolio, only a portion (as reasonably determined) of that hedging loss can be said to be reasonably related to disregarded income (see paragraphs 136 to 143 below).

129. Where a taxpayer is in an overall net capital loss position for a year, there will not be any capital gain income forming part of the disregarded income under paragraph 770-75(4)(a) to which foreign currency hedging losses can be reasonably related. However, this does not mean that the foreign currency hedging losses cannot be reasonably related to other income, for example foreign currency hedging gains, that are disregarded income as per paragraphs 119 to 126 above.

Revenue returns from the underlying foreign assets

130. As noted above, the value of the portfolio which is hedged is derived from the market value of the underlying assets. The market value of an asset may reflect both the potential capital and revenue returns.

131. Under an overlay foreign currency hedging strategy, the market value of the portfolio, and hence the dollar value being hedged, will be updated regularly (usually monthly depending on the type of assets) to ensure an accurate dollar value.

132. Thus, in hedging the value of a portfolio, there is a basis to say that the future revenue flows from that portfolio are also being hedged.

133. However, the objective of an overlay foreign currency hedging strategy is risk minimisation to preserve the underlying market values. In practice revenue flows are not normally hedged or separately taken into account in constructing the trades to effect the hedging program.

134. Thus, while the market value of the portfolio informing the dollar value to be hedged may, in respect of some assets, reflect both capital and revenue flows, the relationship is more tenuous than the relationship to the net capital gain income. The revenue flow (rent for instance), may or may not produce an effect on the market value of the underlying assets in the portfolio. Furthermore, where there are revenue flows, the value of these do not separately form part of the dollar value being hedged.

135. In the context of a provision seeking to establish a net foreign income amount to calculate the offset limit, the foreign currency hedging loss on a transaction to manage foreign currency exposure based on values of a portfolio does not have a *reasonable* relationship to the revenue flows from the underlying items such that a netting off effect against this type of income is required. The foreign currency hedging loss, therefore, while related to the revenue flow, is not reasonably related to such a degree that it is to be taken into account in determining the net amount of foreign income unless that revenue flow is specifically part of the hedging strategy.

Do foreign currency hedging losses covered by subparagraph 770-75(4)(b)(ii) need to be apportioned?

136. The Explanatory Memorandum to the *Tax Laws Amendment (2007 Measures No. 4) Bill 2007* (the EM) which inserted Division 770, states at paragraphs 1.145 to 1.147 the following about the apportionment of deductions:

> 1.145 Whether a deduction *reasonably relates* to the disregarded income amounts will be a question of fact depending on the circumstances of the taxpayer. Expenses that relate *exclusively* to the disregarded income amounts will be ignored in calculating the second element of the cap calculation. Deductions that relate to both the disregarded income amounts and other assessable income will need to be apportioned on a reasonable basis between the different income amounts. ***[Schedule 1, item 1, subparagraph 770-75(4)(b)(ii)]***
>
> 1.146 The nature and size of the taxpayer's business, the type of income concerned and the methods used by the taxpayer to account for foreign income and expenses may be relevant in determining how the taxpayer should apportion deductions. A common example of the type of deduction a taxpayer will need to apportion would be head office expenses incurred by a taxpayer who operates both in Australia and overseas and which are relevant to the operation of both activities.
>
> 1.147 Provided the approach adopted is objective and results in a reasonable apportionment of the deductions, it will (generally) be acceptable. To the extent such expenses are considered to reasonably relate to the disregarded income amounts, they will be ignored in calculating the second element of the cap calculation. ***[Schedule 1, item 1, subparagraph 770-75(4)(b)(ii)]***

137. The EM at paragraph 1.145 provides that deductions 'that relate to both the disregarded income amounts and other assessable income will need to be apportioned on a reasonable basis between the different income amounts'.

138. Apportionment such as that referred to in the example in paragraph 1.146 of the EM is required where part of a deduction relates to disregarded income and part does not.

139. However, a deduction in its entirety can be reasonably related to more than one amount of income, only one of which may be disregarded. In such a situation, there is no part of the deduction which is not related to disregarded income and apportionment is not required.

140. As explained above, a foreign currency hedging loss can relate to a foreign currency hedging gain and a capital gain upon a CGT event happening to an underlying asset.

141. Where the hedging gains are all foreign sourced in accordance with the position in paragraphs 84 to 102, the hedging losses from transactions entered into as part of the same hedging strategy are reasonably related to the disregarded income that is the hedging gains. That is, in these circumstances the foreign currency hedging losses are reasonably related, in their entirety, to the foreign currency hedging gains (which are disregarded income). There is therefore no need to consider whether those losses also relate to any other disregarded income.

142. Issues of apportionment will however arise where foreign currency hedging losses do not relate in their entirety to disregarded income. For example, where any associated foreign currency hedging gains are Australian sourced, the only disregarded income to which the hedging losses relate, at least in part, may be a net capital gain which includes a capital gain arising from the sale of some of the underlying assets comprising the hedged portfolio.

143. As mentioned above, such a capital gain is made in respect of only a partial realisation of the portfolio (whereas the hedging loss relates to the entire portfolio), reasonable apportionment is required to determine how much of the hedging loss reasonably relates to disregarded income.

144. What is an appropriate method of apportionment is a question of fact. The method to be adopted in any particular case must be 'fair and reasonable' in all the circumstances[43]. There may be more than one fair and reasonable basis for apportionment. The Commissioner will accept the method adopted provided it is fair and reasonable and applied consistently.

[43] *Ronpibon Tin NL and Tongkah Compound NL v. Federal Commissioner of Taxation* (1949) 78 CLR 47 at 59; [1949] HCA 15 at paragraph 18; *Adelaide Racing Club Inc v. Federal Commissioner of Taxation* (1964) 114 CLR 517 at 526; [1964] HCA 57 at paragraph 16.

Appendix 2 - Alternative Views

Source of foreign currency hedging gains

145. Because source is judged as a 'hard, practical matter of fact' and there are no universal rules or presumptions to apply, there are significant alternative views. Some taxpayers are of the view that the source of a gain in the given transaction is Australia where the relevant decision making is occurring in Australia. Proponents of this view may claim that to rely on contract law to determine the jurisdiction in which the underlying contract is formed places too much emphasis on the formal attributes of the transaction as opposed to the 'practical' source of the income. They view it as making the 'mistake' that Latham CJ warned against in *Cliff's International*.

146. Under this view, it could seem appropriate to depart from the traditional focus on the formation of the contract as 'where' the profit is made. While the contract is still the element which actually gives rise to the gain (embodying the relevant rights and obligations and reflecting the terms and conditions dictating whether or not a gain or loss ensues) proponents of this view call into question its practical relevance in determining a source of gain, further arguing that reliance solely on the place of contract gives rise to arbitrary and capricious results. This is particularly where the mechanics involved in the formation of the contract could involve many different jurisdictions.

147. Under this view, it is pointed out that once the trade is 'ordered', it will generally be then executed without amendment.

148. Therefore, if all the decisions regarding the timing, size and nature of the trade are undertaken in Australia, the alternative view would conclude the source of the gain will be Australia. Under this approach, source is viewed as being where all the decisions are made as opposed to relying on the formal steps leading to the formation of the contract, the location of which may be arbitrary.[44]

149. However, focussing on the decisions being made is to focus on 'why' the hedging gain is being made and the activity involved in this, not 'where' the hedging gain is made and the activity involved on this aspect. The transaction itself is capable of producing both a gain and loss. The outcome is determined solely on the terms of the contract itself and the currency fluctuations that occur between entering into and closing out the contract.

150. Thus, the Commissioner does not accept this alternative view. In the particular circumstances listed in Example 1, the practical source of the gain is the contract. The source for income tax purposes is therefore where that contract is formed.

[44] This approach will give rise to the need to consider apportionment where the first element is split between Australia and the foreign jurisdiction.

Are foreign currency hedging losses reasonably related to foreign currency hedging gains

151. The conclusion at paragraphs 119 to 126 above is that a foreign currency hedging loss is reasonably related to a foreign currency hedging gain where the loss and gain are made in pursuance of the same hedging strategy.

152. There is an alternative view that the relationship required between the deduction and the income should be found in looking only at the income producing activity itself. On this basis a foreign currency hedging loss is not related to a foreign currency hedging gain because, viewed on a transactional level, the two transactions are not related.

153. This view adopts a narrow approach to the meaning of 'reasonable relationship'. It essentially requires the connection to be similar to the connection required by section 8-1 – that of 'incurred in gaining or producing'. The Commissioner does not accept this view. The very nature of the different description used, and the similarities in policy to the former provisions, means that a wider view is to be adopted.

154. It is appropriate to find the relationship at the level of the hedging strategy because the gains and losses both stem from this hedging strategy. To not have regard to the hedging losses would not reflect the true, overall position of the taxpayer in respect of its foreign income (in this instance, the hedging gains).

Appendix 3 – Your comments

155. You are invited to comment on this draft Ruling, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

156. Comments are specifically invited on appropriate methods of apportionment where the circumstances outlined in paragraph 143 above arise.

157. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	**2 May 2014**
Contact officer:	**Andrew Fort**
Email address:	**Andrew.Fort@ato.gov.au**
Telephone:	**(08) 8208 1441**
Facsimile:	**(08) 8208 1899**
Address:	**Australian Taxation Office** **GPO Box 9977** **Adelaide SA 5001**

Appendix 4 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TR 2012/3

Subject references:

- currency hedging transactions
- currency transactions
- foreign income
- foreign income tax offset
- hedging

Legislative references:

- ITAA 1936 former 160AF
- ITAA 1936 former 160AF(8)
- ITAA 1936 former Div 18
- ITAA 1997 8-1
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 Div 230
- ITAA 1997 230-15
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- ITAA 1997 230-45
- ITAA 1997 230-310(4)
- ITAA 1997 230-315(2)
- ITAA 1997 230-335
- ITAA 1997 Subdiv 230-E
- ITAA 1997 Subdiv 230-H
- ITAA 1997 770-10(1)
- ITAA 1997 770-15(1)
- ITAA 1997 770-75
- ITAA 1997 770-75(1)
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- ITAA 1997 770-75(2)(b)(i)
- ITAA 1997 770-75(2)(b)(ii)
- ITAA 1997 770-75(4)
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Case references:

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- Federal Commissioner of Taxation v United Aircraft Corporation (1943) 68 CLR 525; [1943] HCA 50; (1943) 7 ATD 318
- HP Mercantile Pty Ltd v. Commissioner of Taxation (2005) 143 FCR 553; [2005] FCAFC 126; 2005 ATC 4571; (2005) 60 ATR 106
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- Woodside Energy Ltd v. Federal Commissioner of Taxation (2006) 155 FCR 357; [2006] FCA 1303; (2006) 64 ATR 379

Other references:

- Explanatory memorandum to the Tax Laws Amendment (2007 Measures No. 4) Bill 2007
- Explanatory memorandum to the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008

ATO references

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